

No.

8847

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In the United States  
Circuit Court of Appeals  
For the Ninth Circuit. *8*

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JOAN STORM DEZENDORF,

Appellant,

vs.

TWENTIETH CENTURY-FOX FILM CORPORA-  
TION, a corporation,

Appellee.

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Transcript of Record

Upon Appeal from the District Court of the United States for the  
Southern District of California, Central Division.

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FILED

MAY 2 1938

PAUL P. O'BRIEN,  
CLERK



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys.**

For Appellant:

CALVIN L. HELGOE, Esq.,

JAS. M. NAYLOR, Esq.,

I. HENRY HARRIS,

639 South Spring Street,

Los Angeles, California.

For Appellee:

ALFRED WRIGHT, Esq.,

GORDON HALL, Esq.,

621 South Spring Street,

Los Angeles, California.

United States of America, ss.

TO TWENTIETH CENTURY-FOX FILM CORPORATION, a corporation Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 2nd day of June, A. D. 1938, pursuant to an order allowing appeal filed on May 2nd, 1938, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause In Equity No. 1173-C, Central Division, wherein JOAN STORM DEZEN-DORF, an individual, sometimes known as Joan Storm is appellant and you are appellee to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable GEO. COSGRAVE United States District Judge for the Southern District of California, this 3rd day of May, A. D. 1938, and of the Independence of the United States, the one hundred and sixty-second.

Geo. Cosgrave

U. S. District Judge for the Southern District of  
California



Service of a copy of the foregoing Citation is acknowledged this 3rd day of May, 1938

Service of a copy of Assignment of Errors,

Service of a copy of Plaintiff's Petition for Appeal from Decree dismissing Bill of Complaint,

Service of a copy of Praecipe for Transcript of Record on appeal from Decree Granting Dismissal with prejudice.

Alfred Wright

Gordon Hall Jr.

Attorneys for Appellee

[Endorsed]: Filed May 3, 1938 R. S. Zimmerman,  
Clerk By Edmund L. Smith, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA,  
CENTRAL DIVISION

— — — — —

JOAN STORM DEZENDORF, )  
an individual, sometimes known as )  
Joan Storm, )  
)  
Plaintiff, )  
)  
vs. )  
) In Equity No. 1173-C  
TWENTIETH CENTURY-FOX )  
FILM CORPORATION, a cor- )  
poration, )  
)  
Defendant. )  
\_\_\_\_\_ )

BILL OF COMPLAINT IN EQUITY FOR  
INFRINGEMENT OF COMMON LAW  
COPYRIGHT.

Complaining of the above-named defendant, the plaintiff respectfully shows the court as follows:

I.

That plaintiff, Joan Storm Dezendorf, sometimes known as Joan Storm, is a citizen of the United States and a resident of the City of Los Angeles, County of Los Angeles, and State of California.

II.

That, upon information and belief, the defendant, Twentieth Century-Fox Film Corporation, at all times

hereinafter mentioned was, and still is, a corporation organized and existing under and by virtue of the laws of the State of New York, having a regularly established place of business in the City of Los Angeles, County of Los Angeles, State of California, and in the Central Division of the United States District Court for the Southern District of California, and was, and still is, engaged in the business of manufacturing and distributing what is commonly characterized and known as motion pictures and motion picture photoplays.

### III.

That the grounds on which the jurisdiction of this court depends are that this is a suit of a civil nature in equity for infringement of common law copyright, between citizens of different states, wherein the matter in controversy exceeds, exclusive of interest and costs the sum or value of Three Thousand Dollars (\$3,000.00).

### IV.

That prior to January 1, 1934, plaintiff created, originated, invented and wrote a new and novel play entitled "DANCING DESTINY".

### V.

That the said play was written as an original and independent undertaking by said plaintiff, the author thereof, as aforesaid, and contains a large amount of matter wholly original with the said author thereof, and constitutes copyrightable subject matter, according to the common law of copyright.

### VI.

That since writing said play entitled "DANCING DESTINY", as aforesaid, said plaintiff has maintained the same in unpublished form and as a result thereof

there was secured to her under the common law of copyright, the right as author and proprietor of an unpublished work to prevent the copying, publishing or use of such unpublished work without her consent.

#### VII.

That in or about the month of June, 1934, and pursuant to negotiations that had theretofore taken place, plaintiff had caused the manuscript of the play "DANCING DESTINY" to be delivered to defendant; that sometime subsequent to the month of June, 1934 and prior to the month of December 1935, said defendant rejected said manuscript of the play "DANCING DESTINY" and the same was returned to plaintiff. That on or about December 1, 1935, and at the request of the defendant, Twentieth Century-Fox Film Corporation the manuscript of said play was again submitted to the said defendant, and thereafter, and more particularly on or about January 31, 1936, said defendant informed the plaintiff that the said manuscript had been considered and found not to be the type of story it desired for two of its child stars, familiarly known as "Shirley Temple" and "Jane Withers".

#### VIII.

That the defendant then and there knew and was fully cognizant of the fact that plaintiff was the author and proprietor of said play "DANCING DESTINY" and the copyright title thereto, and that for motion picture purposes said literary property and dramatic play under the common law of copyright belonged to and was possessed by the plaintiff.

#### IX.

That notwithstanding the foregoing, the plaintiff shortly thereafter illegally and unlawfully manufactured

a picture entitled "STOWAWAY", which it then and there undertook to distribute and sell for profit in the various motion picture houses exhibiting pictures throughout the world.

## X.

That the picture manufactured by the defendant entitled "STOWAWAY" is a talking motion picture photoplay.

(a) That said photoplay "STOWAWAY" is a deliberate piracy and infringement of plaintiff's play "DANCING DESTINY";

(b) The defendant illegally, unlawfully, wilfully and deliberately copied plaintiff's play "DANCING DESTINY";

(c) The defendant copied and made use of the same technique, dramatic situations and/or episodes, dramatic plot and its treatment, embellishment and detail;

(d) The defendant copied and made use of the same series of events and episodes with the conscious intention and purpose to excite by presentation and representation in "STOWAWAY" the same emotions in the same sequence with the same casual relation as plaintiff had invented and created in her play "DANCING DESTINY".

## XI.

Plaintiff has not at any time granted to the defendant, any right, license or privilege to produce, present or represent in a talking motion picture, or otherwise, her play "DANCING DESTINY", or to make any dramatization of any character whatsoever in picture form of said play.

## XII.

Upon information and belief the defendant has undertaken and is continuing to undertake to its profit and pecuniary advantage to distribute, license, lease, sell and use said talking motion picture "STOWAWAY" infringing and pirating plaintiff's play "DANCING DESTINY" throughout the United States of America and each and every state and dependency thereof, and in all foreign countries of the world and has caused said talking motion picture entitled "STOWAWAY", infringing and pirating plaintiff's play "DANCING DESTINY", to be exhibited in motion picture theaters in the State of California, including the Southern District thereof, and in divers and sundry other states of the United States of America, and is collecting large sums of money and securing large profits from the exhibitions of said infringed and pirated play.

## XIII.

That by virtue of the defendant's illegal and unlawful acts, as aforesaid, the value of plaintiff's property is being rapidly destroyed.

## XIV.

That the acts of the defendant are wrongful and continuing, consecutive and destructive. Plaintiff has no adequate remedy at law. The damage to the plaintiff is immediate; unless the defendant is enjoined and restrained by an injunctive pendente lite and permanently the value of plaintiff's property will be dissipated and destroyed and plaintiff irreparably and irretrievably injured.

## XV.

Plaintiff files together with this, her bill of complaint, the manuscript copy of her play entitled "DANCING



DESTINY", marked "Plaintiff's Exhibit A". Plaintiff also files herewith a transcript of the dialog in action taken by plaintiff from said defendant's talking motion photoplay entitled "STOWAWAY", marked "Plaintiff's Exhibit B", and a copy of the dialog taken from defendant's talking motion picture entitled "STOWAWAY" marked "Plaintiff's Exhibit C", and demands, pursuant to the copyright laws, the rules of the Supreme Court of the United States, and of this court in such cases made and provided, that the defendant file forthwith with the Clerk of this Court a positive copy of said talking motion picture entitled "STOWAWAY" as the same is now being exhibited as aforesaid in order that this Honorable court may take cognizance thereof and from an examination and showing of said manuscript, scenario, continuity, and positive copy of the said talking motion picture be fully advised in the premises to the end that the plaintiff's rights in the premises may be fully protected.

WHEREFORE, the Plaintiff prays:

1. That a writ of subpoena issue out of this court directed to the defendant, commanding it to appear and answer this bill of complaint within twenty (20) days after the service of said writ.

2. That the defendant, and all persons, firms, or corporations acting under the defendant's direction, control, permission, and license, be enjoined and restrained pendente lite and permanently and perpetually thereafter from publicly or privately producing, presenting, performing or representing, publishing or advertising, distributing, showing or exhibiting in any manner or form whatsoever at any time or place in the United States of America, or in any other country of the world, its said pirating

and infringing talking motion picture at present entitled "STOWAWAY", or permitting said talking motion picture entitled "STOWAWAY" to be publicly or privately produced, presented, performed or represented, published or advertised, distributed, shown or exhibited or otherwise used in any manner or form whatsoever at any time or place in the United States of America, or in any other country of the world.

3. That the negative and positive prints of the said talking motion picture entitled "STOWAWAY" be impounded under the orders and directions of this Honorable court to the end that plaintiff's rights may not be further infringed by the defendant.

4. That the defendant be required to account for and pay over to the plaintiff any and all profits derived from any and all productions and presentations, showings or exhibitions of said talking motion picture entitled "STOWAWAY" at any and all places in the United States of America, or other countries of the world, whether such showings or exhibitions, presentations or representations have been public or private, and that to that end and for that purpose the defendant be required to exhibit its books, documents, papers and accounts in its possession with relation to all funds, moneys and receipts derived from the presentation, exhibition or showing of said talking motion picture entitled "STOWAWAY" and the method of their application.

5. That the defendant be required to pay to the plaintiff any and all damages sustained by the plaintiff in the premises.

6. That the defendant pay the costs of this action to plaintiff.





[TITLE OF DISTRICT COURT AND CAUSE.]

ANSWER.

Comes now the defendant, Twentieth Century-Fox Film Corporation, a corporation, and, answering plaintiff's bill of complaint on file herein, admits, denies and alleges as follows:

I.

Admits the allegations of paragraphs I, II and III of said bill of complaint.

II.

Answering the allegations of paragraphs IV, V and VI, defendant is without knowledge respecting the allegations therein contained to the effect that plaintiff created, originated, invented and wrote, or created, originated, invented or wrote, a play entitled "Dancing Destiny" as an original and independent, or as an original or independent, undertaking or otherwise; and that plaintiff was or is the author thereof; and that said play contains matter original with plaintiff; and that plaintiff has maintained said play in unpublished form, and prays that a strict proof said allegations be required.

Further answering the allegations of said paragraphs, defendant denies that the play therein alleged to have been composed by plaintiff was or is a new and novel or new or novel play; denies that it constitutes an original and independent or original or independent undertaking by its author, and denies that it contains a large or any amount of matter original with its author; denies that it constitutes copyrightable subject-matter according to the common law of copyright or according to the Constitution or laws of the United States or otherwise.

Further answering the allegations of said paragraphs, defendant denies that the contents of the play entitled "Dancing Destiny" are in any respect novel or original with plaintiff but that the same are to be found in the works of other authors and in the public domain, and denies that plaintiff has had or has any right to prevent the use of the same by other persons or any right of property whatsoever therein.

### III.

Answering the allegations in paragraph VII, defendant denies that plaintiff delivered or caused to be delivered the manuscript of the play entitled "Dancing Destiny" to defendant in or about the month of June, 1934, and alleges, on the contrary, that a story outline purporting to have been written by one Joan Storm was submitted to defendant by a literary agent purporting to represent the author thereof on or about the 15th day of November, 1934; denies that said submission was made pursuant to negotiations that had theretofore taken place between defendant and plaintiff, or between defendant and any other person; denies that the said story outline was kept or retained by defendant for the length of time indicated in line 31 on page two to line two of page three of said complaint, and denies that it returned the same to plaintiff. On the contrary, defendant alleges that it rejected said story outline on or about the 18th day of December, 1934 and returned the same to the person who had theretofore submitted it to defendant, as hereinabove alleged.

Further answering the allegations of said paragraph VII, defendant admits that the said story outline was re-submitted to it, but denies that the said re-submission was made at its request; denies that said re-submission took

place on or about December 1, 1935, alleging in this connection the said story outline was re-submitted to it by the same literary agent who had theretofore submitted the same to defendant on or about the 28th day of January, 1936, and that on or about the 31st day of January, 1936, defendant again rejected the said story outline and returned the same to the agent who had resubmitted it as hereinabove alleged.

Further answering the allegations of said paragraph VII, defendant denies that it informed plaintiff that the said story outline had been considered and found to be unsuitable for motion picture purposes, but admits that the said story outline or play entitled "Dancing Destiny" was and is unsuitable for motion picture purposes.

#### IV.

Answering the allegations of paragraph VIII, defendant denies that it at any time knew that plaintiff was or is the author and proprietor, or the author or proprietor, of said play entitled "Dancing Destiny", or that she was the owner or proprietor of any copyright or other title thereto, or that for motion picture or any other purposes said property or play belonged to and was possessed by, or belonged to or was possessed by, plaintiff, and further denies that it was at any time cognizant of any fact, matter or thing alleged by plaintiff in paragraph VIII.

Further answering the allegations of said paragraph VIII, defendant is without knowledge respecting the authorship of the play entitled "Dancing Destiny", the

ownership or proprietorship of the copyright or other title thereto, and the ownership or proprietorship of said play or any rights therein or thereto, and prays that strict proof of the allegations respecting the ownership and proprietorship, or ownership or proprietorship, of said play, its contents, the copyright, or any other title thereto be required.

#### V.

Answering the allegations of paragraph IX, defendant admits that it manufactured, distributed and exhibited a motion picture entitled "Stowaway", but denies that said manufacture, distribution or exhibition of the motion picture entitled "Stowaway" was or is in anywise illegal and unlawful, or illegal or unlawful, and denies that any act, matter or thing alleged, contained or set forth in said paragraph IX was or is illegal and unlawful, or illegal or unlawful.

#### VI.

Answering the allegations of paragraph X, defendant admits that its motion picture entitled "Stowaway" is a talking motion picture play, but, in connection therewith:

(a) Denies that the motion picture entitled "Stowaway" was or is a deliberate or other or any piracy and infringement, or piracy or infringement, of the play entitled "Dancing Destiny" or the story outline hereinbefore mentioned.

(b) Denies that defendant illegally, unlawfully, wilfully and deliberately, or illegally, unlawfully, wilfully

or deliberately copied or reproduced the play entitled "Dancing Destiny" or the story outline hereinbefore mentioned.

(c) Denies that defendant copied and made use of, or copied or made use of, any of the technique, dramatic situations and episodes, or technique, dramatic situations or episodes, contained or to be found in the play entitled "Dancing Destiny" or the story outline hereinbefore mentioned; denies that it copied and made use of, or copied or made use of, the dramatic plot, treatment, embellishment and detail, or the dramatic plot, treatment, embellishment or detail thereof.

(d) Denies that it copied and made use of, or copied or made use of, the same series of events and episodes or events or episodes, or of any of the events or episodes contained or to be found in the play entitled "Dancing Destiny" or the said story outline; denies that at any time it had any intention or purpose to excite, by the presentation or representation of the events and episodes contained in its motion picture entitled "Stowaway", or otherwise, the same or any of the emotions in the same or similar sequences, or with the same or similar relation, as might be excited or evoked in the mind of a reader of the said play or the said story outline; denies that the events and episodes of its motion picture entitled "Stowaway" excite or evoke the same or similar emotions as the events and episodes to be found in said play or story outline, or emotions in anywise similar to those



that may be excited or evoked by any events or episodes invented or created by plaintiff.

Except as to the allegation of paragraph X which is hereinabove specifically admitted, it is the intention of defendant to place at issue each, every and all of the allegations of said paragraph X, and accordingly defendant specifically denies each and every allegation, matter and thing therein set forth and alleged.

Further answering the allegations of paragraph X, defendant denies that it infringed upon either the theme, plot, characters, incidents or situations of the play entitled "Dancing Destiny" or the story outline hereinbefore mentioned, or the treatment thereof, and alleges that the motion picture entitled "Stowaway" produced by it is not an infringement of the said play or the story outline thereof, or of any right of plaintiff or any other person therein or thereto, alleges that the said play and the said motion picture are entirely different and have no points of resemblance save and except such general points of resemblance as exist in any other dramatic composition written upon any kindred subject, and that insofar as any material in the said motion picture has any point of resemblance to said play or the said story outline, such points are common incidents found in the works of many authors and in the public domain.

Further answering the allegations of said paragraph X, defendant alleges that its motion picture entitled "Stowaway" is entirely independent and original dramatic com-

position, created by authors in the employ of defendant, working without knowledge of the existence of the play entitled "Dancing Destiny" or the story outline hereinbefore mentioned, or the contents thereof, and that no use whatsoever of said play or story outline was made in the creation or production of the said motion picture.

#### VII.

Admits the allegations of paragraph XI.

#### VIII.

Answering the allegations of paragraph XII, defendant admits that it has distributed, licensed and leased, for exhibition purposes, its motion picture "Stowaway" and has collected revenue therefrom, and will continue so to do; but denies that its said actions infringe or pirate, or constitute an infringement or pirating of the play entitled "Dancing Destiny" or the said story outline, and denies that any matter or thing alleged or set forth in said paragraph XII constitutes any infringement of the said play or story outline or of any right of plaintiff therein or thereto.

#### IX.

Answering the allegations of paragraph XIII, defendant denies that by virtue of any illegal and unlawful, or illegal or unlawful, acts, and that by virtue of any acts whatsoever on its part, the value of plaintiff's alleged property is being destroyed, and further denies that plaintiff's alleged property or rights are in anywise being destroyed or impaired.



## X.

Answering the allegations of paragraph XIV, defendant denies that the acts therein referred to are wrongful and destructive, or wrongful or destructive, of any right or property, or injurious to any right or property, of plaintiff; denies that plaintiff has no adequate remedy at law; denies that plaintiff has suffered or will suffer any immediate or other damage; denies that unless defendant is enjoined or restrained, the value of plaintiff's alleged property will in anywise be dissipated and destroyed, or dissipated or destroyed, or that any right of plaintiff will be in anywise impaired, and denies that unless defendant is enjoined or restrained, plaintiff will be injured irreparably and irretrievably, or irreparably or irretrievably, or otherwise or at all.

## XI.

Answering the allegations of paragraph XV, defendant denies that any law, statute, or rule of court requires it to file with the clerk of this court a copy of an allegedly infringing work in an action or suit brought for the alleged infringement of a work not copyrighted under the laws of the United States.

WHEREFORE, defendant prays that plaintiff take nothing by her bill of complaint and that this suit be dismissed; that defendant have and recover of and from plaintiff its costs of suit incurred, and for such other and further relief as the Court may deem just and equitable.

Alfred Wright

Gordon Hall Jr.

Solicitors for Defendant, Twentieth Century-Fox  
Film Corporation.

UNITED STATES OF AMERICA, )  
 )  
 SOUTHERN DISTRICT OF CALIFORNIA, ) ss.  
 )  
 COUNTY OF LOS ANGELES, )

GEORGE F. WASSON, JR., being first duly sworn, deposes and says that he is an Assistant Secretary of TWENTIETH CENTURY-FOX FILM CORPORATION, the defendant in the above entitled action, and that as such he is duly authorized to, and does, make this verification on behalf of said corporation; that he has read the foregoing Answer and knows the contents thereof, and that the same are true of his own knowledge except as to those matters therein stated on information or belief, and as to those matters he believes them to be true.

George F. Wasson, Jr.

Subscribed and sworn to before me this 26th day of June, 1937.

[Seal]

Emilio C. de Lavigne

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires, November 27, 1940.

[Endorsed]: Received copy of the within this 28 day of June, 1937 C. L. Helgoe, By J. Clark, attorney for plaintiff. Filed Jun. 29, 1937. R. S. Zimmerman, Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION AMENDING BILL OF  
COMPLAINT

IT IS HEREBY STIPULATED AND AGREED by and between the plaintiff and the defendant, through their respective solicitors, that the bill of complaint on file herein may be amended by the filing with the Clerk of the above entitled court of a copy of plaintiff's play entitled "DANCING DESTINY" and a release print of defendant's motion picture entitled "STOWAWAY", which shall both be deemed to be annexed to said bill of complaint as schedules thereto and incorporated therein with the same force and effect as though originally included therein as integral parts thereof.

Dated: September 10, 1937.

I. HENRY HARRIS, JR.,  
CALVIN L. HELGOE  
JAS. M. NAYLOR

By Calvin L. Helgoe  
Solicitors and Attorneys for  
Plaintiff.

ALFRED WRIGHT  
GORDON HALL, JR.

By Alfred Wright  
Solicitors for Defendant.

IT IS SO ORDERED:

Geo. Cosgrave  
District Judge.

[Endorsed]: Filed Sep. 15, 1937. R. S. Zimmerman,  
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION FOR FILING OF MOTION TO  
DISMISS.

IT IS HEREBY STIPULATED AND AGREED  
by and between the plaintiff and the defendant, through  
their respective solicitors, as follows:

1. That defendant may file herein the accompanying  
motion to dismiss plaintiff's bill of complaint, as said  
bill of complaint is amended pursuant to stipulation and  
order dated September 10, 1937;

2. That the motion may be brought on for hearing  
before the above entitled court by either party upon ten  
days' notice to the other; and

3. That said motion is based and shall be considered  
upon said bill of complaint, amended as aforesaid, un-  
affected by any admission, denial or allegation contained  
in the answer heretofore filed by defendant.

Dated: September 11, 1937.

I. HENRY HARRIS, JR.,  
CALVIN L. HELGOE  
JAS. M. NAYLOR

By Calvin L. Helgoe  
Solicitors for Plaintiff.

ALFRED WRIGHT and  
GORDON HALL, JR.

By Alfred Wright  
Solicitors for Defendant.

IT IS SO ORDERED:

Geo. Cosgrave  
District Judge.

[Endorsed]: Filed Sep. 15, 1937. R. S. Zimmerman,  
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

MOTION TO DISMISS

Comes now the defendant, TWENTIETH CENTURY-FOX FILM CORPORATION, a corporation, and by its solicitors, Alfred Wright and Gordon Hall, Jr., moves the Court to dismiss plaintiff's bill of complaint, as amended pursuant to stipulation and order dated September 10, 1937, annexing thereto and incorporating therein a copy of plaintiff's play entitled "DANCING DESTINY" and a release print of defendant's motion picture entitled "STOWAWAY", upon each of the following grounds and for the following reasons:

1. That said bill of complaint, amended as aforesaid, fails to state facts sufficient to constitute a cause of action.

2. That it affirmatively appears from the said bill of complaint, amended as aforesaid, that no cause of action exists in favor of plaintiff against defendant.

3. That it affirmatively appears from the said bill of complaint, amended as aforesaid, that defendant has neither done nor suffered to be done any act constituting an infringement of any right of plaintiff's in or to the play entitled "DANCING DESTINY".

4. That it affirmatively appears from the said bill of complaint, amended as aforesaid, that no matter of equity exists entitling plaintiff to the relief prayed for, or to any relief, against the defendant.

Said motion will be based upon the said bill of complaint, amended as aforesaid, upon the stipulation and

order dated September 10, 1937, amending said bill of complaint as aforesaid, upon the stipulation and order dated September 11, 1937, permitting this motion to be filed, and upon this motion and the memorandum of points and authorities served and filed herewith.

Dated: September 11, 1937.

ALFRED WRIGHT  
GORDON HALL, JR.

By Alfred Wright  
Solicitors for Defendant.

[Endorsed]: Received copy of the within Motion to Dismiss and Memo. of Points & Authorities this..... day of September, 1937. I. Henry Harris, Calvin L. Helgoe, Jas. M. Naylor By Calvin L. Helgoe, attorneys for plaintiff. Filed Sep. 15, 1937. R. S. Zimmerman, Clerk By L. B. Figg, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED  
STATES SOUTHERN DISTRICT OF CALI-  
FORNIA CENTRAL DIVISION

JOAN STORM DEZENDORF, )	
an individual, sometimes known as )	
Joan Storm, )	
)	In Equity
Plaintiff, )	No. 1173-C
)	
vs. )	DECREE OF
)	DISMISSAL
TWENTIETH CENTURY-FOX )	WITH
FILM CORPORATION, a cor- )	PREJUDICE
poration, )	
)	
Defendant. )	
_____ )	

This cause came on to be heard at this term on the 31st day of January, 1938, upon motion of the defendant to dismiss bill of complaint as amended, Jas. M. Naylor, I. Henry Harris, Jr., and Calvin L. Helgoe appearing as solicitors for plaintiff, and Alfred Wright and Gordon Hall, Jr., appearing as solicitors for defendant; and thereupon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

1. That the motion of the defendant to dismiss the bill of complaint as amended be and the same is hereby granted.



2. That plaintiff's bill of complaint as amended be and the same is hereby dismissed with prejudice against another action.

3. That defendant have and recover of and from plaintiff its costs of suit incurred herein which are hereby taxed at \$30.50.

Dated this 7th day of February, 1938.

Geo. Cosgrave  
Judge of the United States  
District Court.

Approved as to form, as provided in Rule 44.

JAS. M. NAYLOR  
I. HENRY HARRIS, JR.  
CALVIN L. HELGOE  
By Calvin L. Helgoe

Decree entered and recorded 2/7/38

R. S. ZIMMERMAN,  
Clerk.  
By Francis E. Cross,  
Deputy Clerk.

[Endorsed]: Filed Feb. 7, 1938. R. S. Zimmerman,  
Clerk By Francis E. Cross, Deputy Clerk.



IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF CALI-  
FORNIA CENTRAL DIVISION

-----

JOAN STORM DEZENDORF, )	
an individual, sometimes known as )	
Joan Storm, )	
)	
Plaintiff, )	
)	
vs. )	In Equity
)	No. 1173-C
TWENTIETH CENTURY-FOX )	
FILM CORPORATION, a cor- )	
poration, )	
)	
Defendant. )	
_____ )	

PLAINTIFF'S PETITION FOR APPEAL FROM  
DECREE DISMISSING BILL OF COMPLAINT  
TO THE HON. GEORGE COSGRAVE, JUDGE OF  
THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALI-  
FORNIA:

Joan Storm Dezendorf, an individual, sometimes known as Joan Storm, plaintiff above named, feeling herself aggrieved by the final order, judgment and decree of the above-entitled court granting the motion of the above

named defendant to dismiss the bill of complaint herein with prejudice, which said final order, judgment and decree was made and entered herein on February 7, 1938, does hereby petition for an appeal from said order, judgment and decree of dismissal with prejudice to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons and upon each and all of the grounds set forth in the assignment of errors filed herewith, and prays that her appeal may be allowed and a citation issued, directed to said defendant, Twentieth Century-Fox Film Corporation, a corporation, commanding it to appear before the said United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice in the premises and that a transcript of the record, proceedings and evidence in the above-entitled action, duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, or for such other, further and different order or relief, as to this Honorable Court may seem just in the premises.

JOAN STORM DEZENDORF,

By Calvin L. Helgoe

Her Attorney.

Calvin L. Helgoe

Jas. M. Naylor

I. Henry Harris

Solicitors and Attorneys for Plaintiff.

ORDER ALLOWING APPEAL

The foregoing appeal is hereby allowed upon the filing herein by said petitioner of a cost bond, conditioned as required by Section 1000 of the Revised Statutes of the United States, with sufficient sureties to be approved by this Court, in the sum of Two Hundred Fifty Dollars (\$250.00).

Dated at Los Angeles, in said District, this 2nd day of May, 1938.

Geo. Cosgrave

U. S. District Judge.

[Endorsed]: Filed May 2, 1938. R. S. Zimmerman,  
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

### ASSIGNMENT OF ERRORS.

Now comes JOAN STORM DEZENDORF, an individual, sometimes known as Joan Storm, plaintiff above named, and assigns the following and each of them as errors on which she will rely upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain final order, judgment and decree of the above-entitled court, granting defendant's motion to dismiss the bill of complaint herein with prejudice, made and entered herein on February 7, 1938.

1. That the District Court erred in dismissing said amended bill of complaint for the reason that said amended bill of complaint states facts sufficient to constitute a cause of action for infringement of plaintiff's common law copyright in her play entitled "Dancing Destiny".

2. That the District Court erred in dismissing said amended bill of complaint for the reason that said amended bill of complaint states a valid cause of action for infringement and plagiarism of plaintiff's common law copyright, in her play entitled "Dancing Destiny", against the defendant for the manufacture and public distribution of its motion picture entitled "STOW-AWAY".

3. That the District Court erred in failing to order, adjudge and decree, upon comparing plaintiff's play en-

titled "DANCING DESTINY" and defendant's motion picture entitled "STOWAWAY", that:

(a) Said motion picture photoplay "STOWAWAY" was a deliberate piracy and infringement of plaintiff's play "DANCING DESTINY".

(b) That defendant illegally, unlawfully, wilfully and deliberately copied plaintiff's play "DANCING DESTINY".

(c) That defendant in manufacturing its motion picture photoplay "STOWAWAY" had copied and made use of the technique, dramatic situations and/or episodes, dramatic plot, treatment, embellishment, and detail of plaintiff's play "DANCING DESTINY".

(d) That the defendant had copied and made use of the same series of events and episodes with the conscious intention and purpose to excite by presentation and representation in the motion picture "STOWAWAY" the same emotions in the same sequence with the same casual relation as plaintiff had invented and created in her play "DANCING DESTINY".

4. That the District Court erred in dismissing said amended bill of complaint for the reason that it appears from the facts set forth in said amended bill of complaint and the exhibits attached thereto, that the defendant's motion picture photoplay "STOWAWAY" is an infringement of the plaintiff's play entitled "DANCING DESTINY".

5. That the District Court erred in rendering the decree of dismissal with prejudice entered herein on the 7th day of February, 1938 for the reason that said decree is contrary to law and the facts as stated in the amended bill of complaint.

6. That the District Court erred in not finding as a matter of law that plaintiff has been damaged by the deliberate copying and plagiarism of plaintiff's play "DANCING DESTINY" by defendant in the manufacture and public distribution of its motion picture "STOW-AWAY".

7. That the District Court erred in failing to grant plaintiff the relief prayed for in the bill of complaint on file herein.

8. That the District Court erred in failing to make findings of fact and conclusions of law herein in accordance with Equity Rule 70½.

DATED this 2nd day of May, 1938.

Calvin L. Helgoe

Jas. M. Naylor

I. Henry Harris

Solicitors and Attorneys for Plaintiff.

[Endorsed]: Filed May 2, 1938. R. S. Zimmerman,  
Clerk By L. B. Figg, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

COST BOND ON APPEAL

Know All Men by These Presents

That the undersigned, Western Surety Company, doing business in the County of Los Angeles, State of California, is held and firmly bound unto TWENTIETH CENTURY-FOX FILM CORPORATION, a corporation, appellee, in the full and just sum of Two Hundred and fifty (\$250.00) Dollars to be paid to the said Twentieth Century-Fox Film Corporation, a corporation, its successor or assigns; to which payment well and truly to be made, the undersigned binds itself, its successors and assigns firmly, by these presents.

Sealed with our seals and dated this 3rd day of May, in the year of our Lord One Thousand Nine Hundred and Thirty-eight.

Whereas, lately at the District Court of the United States for the Southern District of California, Central Division, in a suit depending in said Court, between Joan Storm Dezendorf, sometimes known as Joan Storm Versus Twentieth Century-Fox Film Corporation, a corporation a Judgment was rendered against the said plaintiff, Joan Storm Dezendorf, sometimes known as Joan Storm, and the said Plaintiff, Joan Storm Dezendorf, sometimes known as Joan Storm having obtained from said District



Court for the Southern District of California an order allowing appeal to reverse the Judgment in the aforesaid suit, and a Citation directed to the said defendant, Twentieth Century-Fox Film Corporation, a corporation, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,

Now, the condition of the above obligation is such, that if the said plaintiff, Joan Storm Dezendorf, sometimes known as Joan Storm shall prosecute her appeal to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day and year first above written.

[Seal]

Western Surety Company, a corporation

By P. F. Kirby

Vice President & Attorney-in-fact





[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION AND ORDER FOR TRANSMITTING ORIGINAL EXHIBITS TO APPELLATE COURT

It is hereby stipulated and agreed by and between the above named parties, and their respective counsel, that the original exhibits listed herein shall be withdrawn from the files of the above-entitled court and of the Clerk thereof and by said Clerk be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit as part of the record on appeal herein, but none of said exhibits shall be reproduced or printed in said record.

Said original exhibits are to be returned to the files of the above-entitled court upon the determination of said appeal by said Circuit Court of Appeals. The list of said original exhibits is as follows:

(1) Copy of plaintiff's play entitled "DANCING DESTINY" annexed to the bill of complaint herein;

(2) Release print of defendant's motion picture entitled "STOWAWAY" annexed to the bill of complaint herein

Calvin L. Helgoe

Jas. M. Naylor

I. Henry Harris Jr.

Solicitors and Attorneys for  
Plaintiff.

Alfred Wright

Gordon Hall Jr.

Solicitors and Attorneys for  
Defendant.

ORDER FOR TRANSMITTING ORIGINAL  
EXHIBITS TO APPELLATE COURT

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It appearing to the Court to be necessary and proper to transmit the above mentioned original exhibits to the United States Circuit Court of Appeals for the Ninth Circuit for its examination and inspection as part of the record on appeal herein,

IT IS HEREBY ORDERED:

That the original exhibits listed above shall be withdrawn from the files of the above-entitled court and of the Clerk thereof, and by said Clerk be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit as part of the record on appeal herein, but none of said exhibits shall be reproduced or printed in said record, and

IT IS HEREBY FURTHER ORDERED:

That the original documents so transmitted to said United States Circuit Court of Appeals for the Ninth Circuit are hereby made part of the record on appeal herein but none of said exhibits shall be reproduced or printed in said record.

DATED: May 3, 1938.

Geo. Cosgrave  
Judge of the United States District Court.

[Endorsed]: Filed May 3, 1938. R. S. Zimmerman,  
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE FOR TRANSCRIPT OF RECORD ON  
APPEAL FROM DECREE GRANTING DIS-  
MISSAL WITH PREJUDICE

TO R. S. ZIMMERMAN, ESQUIRE, CLERK OF  
THE ABOVE-ENTITLED COURT:

YOU ARE HEREBY REQUESTED to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to an appeal from a decree of dismissal with prejudice heretofore allowed in the above-entitled proceeding, and to include in said transcript the following:

- (1) Bill of Complaint;
- (2) Answer of Defendant;
- (3) Stipulation for filing of Motion to Dismiss;
- (4) Stipulation Amending Bill of Complaint;
- (5) Motion to Dismiss;
- (6) Decree of Dismissal with Prejudice;
- (7) Petition for Appeal from Decree of Dismissal with prejudice;
- (8) Order Allowing Appeal;
- (9) Assignment of Errors thereon;
- (10) Bond on Appeal;
- (11) Citation thereon;
- (12) Stipulation and Order for Transmitting Original Exhibits to Appellate Court;

- (13) The following original Exhibits, none of which is to be reproduced or printed in said Record:
- (a) Copy of Plaintiff's play entitled "DANCING DESTINY" annexed to bill of complaint.
  - (b) Release print of Defendant's motion picture entitled "STOWAWAY" annexed to bill of complaint.
- (14) This Praecipe;
- (15) Clerk's Certificate.

Dated this 3rd day of May, 1938.

Calvin L. Helgoe  
Jas. M. Naylor  
I Henry Harris Jr

Solicitors and Attorneys for Plaintiff and Appellant.

Receipt of a copy of the within Praecipe is hereby acknowledge this 3rd day of May, 1938.

Alfred Wright  
Gordon Hall Jr.

Solicitors and Attorneys for Defendant and Appellee.

[Endorsed]: Filed May 3, 1938. R. S. Zimmerman,  
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

PRAECIPE

To the Clerk of Said Court:

Sir:

Please print 40 copies only of transcript on appeal.

Calvin L. Helgoe  
of Counsel for Plaintiff  
639 S. Spring St.  
Tr. 1224

[Endorsed]: Filed May 3, 1938. R. S. Zimmerman,  
Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 40 pages, numbered from 1 to 40 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; bill of complaint; answer; stipulation amending bill of complaint; stipulation for filing motion to dismiss; motion to dismiss; decree of dismissal; petition for appeal and order allowing appeal; assignment of errors; cost bond on appeal; stipulation and order for transmitting original exhibits and order thereon; praecipe for transcript and praecipe for copies of transcript.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$            and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of May, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of our Independence the One Hundred and Sixty-second.

R. S. ZIMMERMAN,

Clerk of the District Court of the  
United States of America, in  
and for the Southern District  
of California.

By

Deputy.